

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 290/00019/2017

Reserved on : 28.03.2019

Pronounced on : 08.04.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Nehru Lal Vyas s/o Shri Jata Shankar Vyas, aged about 61 years, b/c Brahman, R/o Shivaji Nagar, District Jalore (Office Address:- Worked as APM Jalore under SPO, Sirohi, Sirohi Division, Sirohi)

...Applicant

(By Advocate: Shri S.P.Singh)

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. The Postmaster General, Western Region Rajasthan, Jodhpur
4. Director of Postal Services, O/o Postmaster General, Western Region, Jodhpur.
5. Superintendent of Post Offices, Sirohi Division, Sirohi.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

Per Mrs. Hina P.Shah

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs: -

- (i) The impugned order Memo No. F7-01/2013-14/VIII dated 29.4.2016 forwarded by respondent No.5 may kindly be declared illegal, unjust improper and deserves to be quashed and set aside.
- (ii) That by writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest @ 18% pa.
- (iii) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded to the applicant.

2. The case, as stated by the applicant, is that he was appointed as Postal Assistant on 29.4.2004 and worked for more than 19 years with sincerity and honesty. While he was posted as APM (SB) at HO Jalore under SPO Sirohi, a fraud was detected at TSO Industrial Area, Jalore committed by Shri Ganpat Singh Deora, the SPM. The respondent vide letter dated 29.04.2016, directed the applicant to deposit the amount Rs. 17750/- whereas in a similar case, punishment is already awarded and recovery is made from the applicant to the tune of Rs. 180955/- in equal six instalments of Rs. 20,000/- and last EMI of Rs. 60,955/- from DCRG. Since the respondents passed recovery order in the same case, therefore, the applicant contends that he cannot be punished for the same charge twice, which comes under the premise of double jeopardy. The applicant further averred that the respondents did not

issue charge sheet alleging any irregularity, but instead directly recovered the amount from him forcibly one day before his retirement. The respondents did not make any inquiry and all of sudden before one day of his superannuation, the letter is issued to deposit the amount otherwise the NOC will not be issued and resultantly, all formalities pertaining to pension will be kept pending. The applicant was compelled to deposit the amount without taking into consideration the established procedure under CCS (CCA) Rules, 1965. The letter dated 29.4.2016 mentioned that there was irregular withdrawal in the SB Account No.75090 of account holder namely Deva Ram s/o Prabhaji Prajapat. The respondents did not bother to enquire into the said matter or extend any opportunity to confirm whether the above account no. and person is correct or false. No report has been handed over in connection with the inquiry in this regard. The respondents had only adopted pick and choose policy to compensate amount which has nothing to do with the applicant. The respondents adopted policy of remedial measure because the respondents are unable to recover the amount from main culprit. Therefore, the action of the respondents is nothing but, an example of glaring arbitrariness and the

same is intentional. The applicant relies on the judgment of the Hon'ble Apex Court in the case of State of Punjab and Ors. vs. Rafiq Masih (White Washer) decided on 18.12.2014 wherein the following recoveries would be impermissible in law:-

- (i) Recoveries from employees belonging to Class-III and Class-IV service (or Group-C and Group-D service).
- (ii) Recovery from Retired employees, or employees who are due to retire within one year of the order of recovery.
- (iv) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

The applicant further stated that the respondents violated Article 14, 21 and 300A of the Constitution of India. The applicant has also stated that the respondents have also not followed Rule 106, 107 and 204 of the P&T Manual Vol. III and also the provisions under CCS (CCA) Rules, 1965. Therefore, the applicant prays that the impugned memo dated 29.4.2016 issued by respondent No.5 deserves to be quashed and set-aside and the amount already recovered be directed to be refunded to the applicant.

3. The respondents have filed reply 1.8.2018 and stated that Shri Ganpat Singh Deora, Ex SPM Industrial Area, Jalore DSO committed a fraud in MIS and RD Accounts to the tune of Rs. 2,91,30,671 by withdrawing the amount two or three times in an account by making forged signature and thumb impression of account holder. Mr. Deora also deposited/credited the RD maturity amount in forged SB Account which was simultaneously withdrawn after some time by using same tactics of forged signature. As per task force team report, the applicant while working as SPM, Industrial Area, Jalore DSO on 30.12.2011 made a forged withdrawal amounting to Rs. 35,500 from IA Jalore DSO SB account No.75090 of Shri Deva Ram s/o Shri Prabhaji Prajapat. This withdrawal was totally forged and bogus, but the applicant allowed this withdrawal and did not tally the signature of account holder with sample signatures and such withdrawal amount was included in the said fraud amount of Rs. 2,91,30,671 and there was clear loss to the department of Rs. 35500/-. Therefore, letter dated 29.4.2016 was issued to the applicant and he was instructed to deposit half amount of withdrawal i.e. Rs. 17750/- in Govt. Account and the same was voluntarily credited in Govt. Account by the applicant at Jalore HO on

29.4.2016. Therefore, the contention of the applicant that such voluntary deposit was recovery is not correct.

The respondents have further stated that the applicant filed the present OA on 2.1.2017 which was dismissed at admission stage on 18.1.2017. Thereafter the applicant approached the Hon'ble High Court at Jodhpur and the Hon'ble High Court, Jodhpur in DB CWP No.17116/2017 vide its order dated 10.1.2018 partially allowed the WP and remitted back the matter to the Tribunal to decide the same on merits. It is further stated that the applicant feeling his responsibility, voluntarily credited the amount of Rs. 17750/- in Govt. Account on 29.4.2019 and nothing survives in the matter. The respondents have denied the contention of the applicant that they have neither issued a chargesheet nor recovered the amount forcefully from the applicant. They have stated that the question of initiation of disciplinary proceedings would arise only if the applicant had not deposited the said amount, but since the applicant had voluntarily credited the said amount, therefore, there was no injustice caused to the applicant. The respondents have clarified that only a notice was issued to the applicant and the applicant wilfully and voluntarily credited the

amount which shows that he has accepted his guilt without any objections. Therefore, the OA is liable to be dismissed.

4. The present OA was dismissed at admission stage on 18.1.2017. Thereafter the applicant filed DB CWP No.17116/2017 before the Hon'ble High Court at Jodhpur and vide order dated 10.1.2019, the Hon'ble High Court restored the case before this Tribunal for fresh adjudication.

5. Heard Shri S.P.Singh, learned counsel for the applicant and Shri K.S.Yadav, learned counsel for the respondents and perused the material available on record.

6. The controversy involved in this matter is with regard to forged withdrawal of an amount of Rs. 35500/- from SB A/c No.75090 of Shri Deva Ram s/o Shri Prabhaji Prajapat on 30.12.2011, for which the respondents have issued a letter to the applicant dated 29.4.2016 i.e. one day prior to the date of superannuation of the applicant stating that he was fully responsible for the withdrawal of Rs. 35500/- and liable for proportionate amount of Rs. 17500/- to be recovered from him. At that juncture, since the applicant was going to retire the next day, therefore, it is obvious that compelling circumstances would have prevailed to deposit the said amount, so that his retiral dues may not be withheld. The contention of the respondents that the said

amount was voluntarily deposited by the applicant and it was not a case of recovery, cannot be accepted in these circumstances. The forged withdrawal of money was of 30.12.2011. If the applicant was stated to be guilty of pecuniary loss caused to the department, the respondent department could have taken action according to the relevant provisions and should have followed the procedure for imposition of penalty by giving proper opportunity to the applicant to defend his case well before his retirement. One day prior to his retirement, the action of the respondents cannot be said to be justified as if the applicant did not deposit the amount, his retiral benefits could have been delayed at the time of his retirement. In these circumstances, amount deposited by the applicant cannot be said to be voluntary, but it is under a compulsion to save disbursement of his retiral benefits. In this regard, it would be relevant to extract some of the observations of the Hon'ble Apex Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors.** (2015) 4 SCC 334, which reads as under:-

".....It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his

needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement or soon before retirement. A period within one year from the date of superannuation or in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order or recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation."

In the light of the above observations of the Hon'ble Apex Court, if the present matter is considered, the order passed just before one day prior to the retirement of the applicant cannot be said to be justified. Therefore, the impugned order/letter dated 29.04.2016 (Ann.A/1) is liable to be quashed, which is accordingly, quashed and set-aside. The respondents are directed to refund the amount of Rs. 17750/- already recovered from the applicant within three months from the date of receipt of a copy of this order.

7. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER
 R/

(HINA P.SHAH)
JUDL. MEMBER